merits of the case will not enter. *Cupples v. Cupples,* 31 Colo., 443; *Frith v. Frith,* 18 Ga., 273; *Porter v. Porter,* 41 Miss., 116. Such allowances are made at the discretion of the court, and may be for any time from commencement to dismissal of the suit, including appeals, but not after termination adversely to the wife. *Ex Parte Winter,* 70 Cal., 291; *Holleman v. Holleman,* 69 Ga., 676; *Newman v. Newman,* 67 Ill., 167. So also he is liable, in the absence of condonation, if the suit is dismissed. *Weaver v. Weaver,* 33 Ga., 172; *Waters v. Waters,* 49 Mo., 385; *Chase v. Chase,* 29 Hun., (N. Y.) 527.

LIMITATION OF ACTIONS—ESTOPPEL—AGREEMENT TO WAIVE.—SMITH v. DUPREE, 140 S. W., 367 (TEX.).—*Held,* that where, prior to the expiration of limitations, the plaintiff requested payment, and defendant, on special occasions importuned plaintiff not to sue, agreeing that he would not plead limitations against the debt, on which request and promise plaintiff relied and forbore to sue, defendant was estopped, on being sued after limitations had run, to plead the statute.

The rule stated in the leading case has been often approved. *Bridges v. Stevens,* 132 Mo., 524; *Bancroft v. Roberts,* 91 N. C., 363; *Holman v. Bridge Co.,* 117 Ia., 268. But mere indulgence by the creditor at the request of the debtor does not estop him from pleading the statute. *Hill v. Hilliard,* 103 N. C., 34. Some cases hold an agreement not to plead the statute is void as against public policy. *Nunn v. Edmiston,* 9 Tex. Civ. App., 562; *Wright v. Gardner,* 98 Ky., 454. At least this is true if the waiver is for all time. *Crane v. French,* 38 Miss., 503. In some states the agreement operates as an acknowledgement of the debt, and must be in writing. *Hodgdon v. Chase,* 29 Me., 47; *State Loan Co. v. Cochran,* 130 Cal., 245; *Shapley v. Abbott,* 42 N. Y., 443. It has also been held that the agreement must be made before the statute has run. *Trask v. Weeks,* 81 Me., 325. And there must be a valid consideration for the promise. *State Loan Co. v. Cochran,* 130 Cal., 245. In *Holman v. Bridge Co.,* 117 Ia., 268, it is held that such an agreement may operate by way of estoppel to plead the statute, though it does not amount to a valid contract. But in *Shapley v. Abbott,* 42 N. Y., 443, the contrary is held on the ground that, since the representation is not one of fact, the maker can not be estopped by it.

MANDAMUS—COMPELLING CONSTRUCTION OF RAILROAD—PETITIONER.—PEOPLE v. UNITED TRACTION CO., 130 N. Y. SUPP., 477.—*Held,* a private person, not interested otherwise than as one of the public, cannot have *mandamus* to compel a street railroad company to build its franchise, the grievance which he would attempt to redress being a public and not a private injury, for which only the state may sue. Betts, J., *dissenting.*

The authorities are not in harmony as to the right of an individual to enforce a public right or to compel the performance of a public duty by *mandamus.* In some states a private individual, having no interest

except as one of the community, is not entitled to the writ. *Mitchell v. Boardman,* 79 Me., 469; *State v. Charleston Light & Water Co.,* 68 S. C., 540. Yet, other courts hold, that if the act affects the people at large or any class of people, any member may move for a *mandamus* to enforce a public duty. *Union R. R. Co. v. Hall,* 91 U. S., 354; *Loader v. Brooklyn Heights R. Co.,* 35 N. Y. Supp., 996; *Florida Cent., etc., R. Co., v. State,* 31 Fla., 482. Of course, if a private person has a peculiar and a special interest in enforcement of right, he can maintain the action. *Southern Express Co. v. R. M. Rose Co.,* 124 Ga., 581; *Robbins v. Bangor, etc., R. Co.,* 100 Me., 496. But, if the right or duty affects the State in its sovereign capacity as distinguished from the people at large, the proceedings must be instituted by the proper public officer. *People ex rel Sherwood v. Bd. Canvassers,* 129 N. Y., 360. The fact that a public officer is entitled to institute proceedings does not defeat the right of a specially interested individual. *State v. Bloom,* 19 Neb., 562. Or, even without such interest, if the public officer is absent or declines to move, the individual may do so. *People v. State University,* 4 Mich., 98. But, in all cases *mandamus* will be denied where there is other adequate remedy. *State v. Kinkaid,* 23 Neb., 641.

MASTER AND SERVANT—INJURIES TO SERVANT—CONTRIBUTORY NEGLIGENCE—EVIDENCE.—GALE V. HELMBACHER FORGE & ROLLING MILLS CO., 140 S. W., 77 (Mo.)—*Held,* evidence that a servant, injured through use of an improper apparatus, worked with it, knowing it to be unsafe, is evidence of his contributory negligence.

Where a servant continued work with knowledge, actual or constructive, of dangers which an ordinary prudent man would refuse to subject himself to, he is guilty of contributory negligence. *Watts v. Boston Tow Boat Co.,* 161 Mass., 378; *Schulz v. Rohe,* 149 N. Y., 132. There is a distinction between knowledge of defects and knowledge of the risks resulting from such defects, and a servant is not chargeable with contributory negligence if he merely knows that defects exist, but does not know, or cannot know by exercise of ordinary care, that there is danger. *Hartrich v. Hawes,* 202 Ill., 334; *Murphy v. City Coal Co.,* 172 Mass., 324. However, it has frequently been held that a servant after learning of the risks, is entitled to time and opportunity for making complaint; *Fordyce v. Edwards,* 60 Ark., 438, that he may continue in the employment a reasonable time for the remedy of defects and the removal of danger; *McCabe v. Montana Cent. Ry. Co.,* 30 Mont., 323, and that his failure to complain or quit work does not charge him with assumption of risk or contributory negligence where his services are hired for a limited time and he has no right to terminate his contract at will. *Poirier v. Carroll,* 35 La. Ann., 699. Where a defect or danger is caused by the master's negligence, and is known or ought to be known, by him, he cannot rely upon the servant's failure to make complaint or quit work after learning thereof. *Seaboard Mfg. Co. v. Woodson,* 98 Ala., 378.